



City of Danville
427 Patton Street, Suite 208
Danville VA, 24541
Phone: (434) 799-5260

Board of Zoning Appeals

May 19, 2022

10:00 A.M.

CONFERENCE ROOM – 4th FLOOR MUNICIPAL BUILDING

AGENDA

A. WELCOME AND CALL TO ORDER

B. ROLL CALL

C. ELECTION OF OFFICERS

D. ITEMS FOR PUBLIC HEARING

1. Appeal of Zoning Administrator Request PL22-83, filed by Nashawan Enterprises Inc. c/o Nashawan Okam at 403 Jefferson St. (Parcel # 21909). The Zoning Administrator did not allow the property owner to apply for a special use permit to operate a commercial recreation use.
2. Appeal of Zoning Administrator Request PL22-84, filed by MKM Partners c/o Shahid Javid, requests an appeal of a zoning violation as allowed in Article 13 of Chapter 41 of the Code of the City of Danville, Virginia at 1501 W Main St. (Parcel # 54805). The Zoning Administrator sent a zoning violation notice to the property owner for operating skill games.
3. Special Exception Request PZ22-97, requesting a Special Exception for a side yard setback as provided for in Zoning Ordinance Article 13.G.7.a. at 604 Memorial Dr. (Parcel #24515.)

E. APPROVAL OF MINUTES FROM APRIL 21, 2021

F. OTHER BUSINESS

G. ADJOURNMENT



City of Danville
427 Patton Street, Suite 208
Danville VA, 24541
Phone: (434) 799-5260

Board of Zoning Appeals

STAFF REPORT

MEETING DATE: MAY 19, 2022

RE: VARIANCE/APPEAL APPLICATION – PL22-83 403 JEFFERSON STREET

Appeal of Zoning Administrator Request PL22-83, filed by Nashawan Enterprises Inc. c/o Nashawan Okam at 403 Jefferson St. (Parcel # 21909). The Zoning Administrator did not allow the property owner to apply for a special use permit to operate a commercial recreation use.

BACKGROUND

The applicant operates skill games in violation of Zoning Ordinance Section. Specifically, Chapter 41, Article 1, Conflicting Ordinances “Whenever any provision of any State or Federal statute or other City ordinance or regulation imposes a greater requirement or a higher standard than is required by this ordinance, the provision of such State or Federal statute or other City ordinance or regulation shall govern.”

Virginia Code defines skill games as gambling devices which are illegal under Title 18.2 Crimes and Offenses Generally, Article 1, Gambling. Therefore, state law pre-empts a Special Use Permit application.

APPEAL

The City BZA has the authority to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the administration or enforcement of Chapter 41, Zoning, of the Code of the City of Danville. The BZA's decision on an appeal is limited to the issue of whether the Zoning Administrator correctly interpreted the Zoning Ordinance. The BZA may reverse or affirm, wholly or in part, or may modify, the decision of the Zoning Administrator. The power to interpret the Zoning Ordinance has its limitations. Although the BZA and the Zoning Administrator must interpret the Zoning Ordinance to execute its responsibilities, they do not have the authority to rule on the validity of a zoning regulation.

RECOMMENDATION

Staff recommends that the BZA affirm the decision to not allow a Special Use Permit Application.

ATTACHMENTS

- ✓ Property Ownership & Existing Zoning Map
- ✓ Data Sheet
- ✓ Existing Land Use Map (Aerial 2019)



City of Danville
Community Development
Planning Division

BOARD OF ZONING APPEALS
VARIANCE APPLICATION

We cannot accept Board of Zoning Appeals (BZA) applications unless the following steps are completed by the twentieth (20th) day of the prior month. BZA meetings are on the third Thursday of each month. This timeline assures the City can meet Virginia public notice laws.

1. The applicant attended a pre-application conference with the Zoning Administrator or designated staff;
2. The applicant completed this application;
3. The property owner or a duly authorized (in writing) representative signed this application;
4. The applicant submitted a plot plan drawn to scale showing the actual dimensions and shape of the property; and the exact size and location all existing and proposed buildings, signs, and required parking spaces;
5. The Zoning Administrator certified that the proposed use and construction plans comply with all Zoning Code provisions, except for the provisions necessitating a variance; and
6. The applicant paid the \$206.00 application fee.

PLANNING DIVISION PROVIDED INFORMATION

Application #: P200-00083 BZA Meeting Date: _____

Date Received: 4/19/22 Received By: Willis

Parcel ID: 21909 Zoning District: CB-C

Additional Information: paid check

A variance shall be granted if evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and:

- (i.) The property interest for where the variance is requested was acquired in good faith and any hardship was not created by the variance applicant;
- (ii.) Granting the variance will not be of substantial detriment to adjacent property and nearby properties in the surrounding geographic area;
- (iii.) The subject property's condition or situation is not of such general or recurring nature as to make reasonably practicable the formulation of a general regulation to be adopted as an ordinance amendment;
- (iv.) Granting the variance does not result in a use that is not otherwise permitted on such property or change the zoning classification of the property; and
- (v.) The variance application relief or remedy sought is not available through a special exception process that is authorized in City Code Chapter 41, Article 6 or the process for zoning ordinance amendment in City Code Chapter 41, Article 4 at the time of variance application filing.

The BZA may impose conditions regarding the location, character, and other features of proposed buildings and use it deems necessary in the public interest and may require a performance guarantee or bond to insure compliance.

APPLICANT PROVIDED INFORMATION

Property Location (address/ID#): 403 Jefferson St

Applicant: NASHAWAN Enterprises Inc % NASHAWAN OKam

Applicant's Address: 403 Jefferson St Danville VA 24541

Applicant's Phone Number: 434-728-4622

Applicant's E-mail: Hcart.001@gmail.com

Variance Request Description:

There is not a special use permit available in Danville. So we are requesting an Appeal
I (we) appeal to the Board of Zoning Appeals for a variance permitting the action described above in that:

i. Explain how you did not create the hardship you need a variance to overcome:

The City does not have a special use permit; the location wishes to operate skill games but which may require a special use permit

ii. Explain how granting the variance will not negatively impact your neighbors and properties close by:

There are no other businesses located on Jefferson Ave that operate skill games

iii. Explain why the hardship on your property is unique and not something that affects similar properties in the same zoning district.

There are no other businesses that operate a skill game on Jefferson Ave.

iv. Explain why granting the variance will not result in a use that is not otherwise allowed on the property or a change in the property's zoning classification.

Skill Games were allowed in VA and are operating through out the state

v. The relief or remedy sought by the variance application is not available with a Special Use Permit.

Currently there are no laws allowing or disallowing the skill games

[Signature]
Applicant Signature

[Signature]
Property Owner Signature
(if not applicant)



City of Danville

Receipt#: 790

Date: 4/19/2022

Payment Receipt

Invoice #	Case Type	Case Number	Sub Type
	PZ-VARIANC	PZ22-00083	

Tender Type / Description	Amount
CHECK- Check	206.00
Sub Total:	206.00

Fees:

Fee Codes / Description	Amount
PZ-VRNCEXP- Variance Fee	206.00
Sub Total:	206.00

Total Amount Due:	206.00
Total Payment:	206.00



City of Danville
427 Patton Street, Suite 208
Danville VA, 24541
Phone: (434) 799-5260

Board of Zoning Appeals

STAFF REPORT

MEETING DATE: MAY 19, 2022

RE: VARIANCE/APPEAL APPLICATION – PZ22-84 1501 West Main Street

Appeal of Zoning Administrator Request PZ22-84, filed by MKM Partners c/o Shahid Javid, requests an appeal of a zoning violation as allowed in Article 13 of Chapter 41 of the Code of the City of Danville, Virginia at 1501 W Main St. (Parcel # 54805). The Zoning Administrator sent a zoning violation notice to the property owner for operating skill games.

BACKGROUND

The applicant operates skill games in violation of Zoning Ordinance Section. Specifically, Chapter 41, Article 1, Conflicting Ordinances “Whenever any provision of any State or Federal statute or other City ordinance or regulation imposes a greater requirement or a higher standard than is required by this ordinance, the provision of such State or Federal statute or other City ordinance or regulation shall govern.”

Virginia Code defines skill games as gambling devices which are illegal under Title 18.2 Crimes and Offenses Generally, Article 1, Gambling. Therefore, state law pre-empts a Special Use Permit application so that avenue is unavailable to the applicant.

APPEAL

The City BZA has the authority to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the administration or enforcement of Chapter 41, Zoning, of the Code of the City of Danville. The BZA's decision on an appeal is limited to the issue of whether the Zoning Administrator correctly interpreted the Zoning Ordinance. The BZA may reverse or affirm, wholly or in part, or may modify, the decision of the Zoning Administrator. The power to interpret the Zoning Ordinance has its limitations. Although the BZA and the Zoning Administrator must interpret the Zoning Ordinance to execute its responsibilities, they do not have the authority to rule on the validity of a zoning regulation.

RECOMMENDATION

Staff recommends that the BZA affirm notice of violation for 1501 West Main Street.

ATTACHMENTS

- ✓ Property Ownership & Existing Zoning Map
- ✓ Data Sheet
- ✓ Existing Land Use Map (Aerial 2019)



WILLIAM H. SHEWMAKE
(804) 343-5035
wshewmake@woodsrogers.com

April 15, 2022

VIA HAND DELIVERY

Mr. Doug Plachcinski, Planning Director & Zoning Administrator
City of Danville Community Development Department
P.O. Box 3300
Danville, Virginia 24541

**Re: Appeal of Zoning Determination
1501 W. Main Street Danville, Virginia 24541 (Tax Map 0611004000001000)**

Dear Mr. Plachcinski:

I represent MKM Partners and Edgewood Mart. Enclosed please find the following materials to support the Appeal to the Board of Zoning Appeals of Notice of Zoning Violation dated March 21, 2022 filed on behalf of the applicants, MKM Partners and Edgewood Mart:

- Appeal application form
- Notice of Violation
- Applicant's Memorandum in Support of the Appeal
- Copy of City tax assessor's map showing boundaries of property and building improvements
- Filing Fee

If you have any questions or require any additional information, please contact me at any time. Thank you in advance for your consideration of this matter.

Sincerely,

WOODS ROGERS PLC

A handwritten signature in cursive script that reads 'William H. Shewmake'.

William H. Shewmake

WHS:jhh

Riverfront Plaza, West Tower, 901 East Byrd Street, Suite 1550
Richmond VA 23219
P (804) 343-5020 • F (804) 799-7897

www.woodsrogers.com

Charlottesville • Lynchburg • Richmond • Roanoke

APPEAL



THE BOARD OF ZONING APPEALS IS AUTHORIZED BY THE MUNICIPAL CODE TO HEAR AND DECIDE APPEALS FROM ANY ORDER, REQUIREMENT, DECISION OR DETERMINATION MADE BY AN ADMINISTRATIVE OFFICER IN THE ADMINISTRATION OR ENFORCEMENT OF THE CITY'S ZONING CODE OR OF ANY ORDINANCE ADOPTED PURSUANT THERETO.

- A. THE APPLICANT obtains a City tax assessor's map or a survey prepared by a licensed engineer or land surveyor showing the exact boundaries of the property.
- B. THE APPLICANT takes the map and a legal description of the property to the Department of Community Development, Room 207, Municipal Building.
- C. THE APPLICANT discusses the proposed appeal with a department representative and receives an appeal application with information for its completion.
- D. THE APPLICANT files the complete application with the Department of Community Development, accompanied by an application fee (\$206.00).
- E. THE DEPARTMENT checks the application and accompanying maps and material for accuracy and completeness, requests the other City departments which may be affected by the appeal request to submit their recommendations, and examines the property.
- F. THE DEPARTMENT sets the case for a public hearing before the Board of Zoning Appeals, publishes legal notices of the public hearing in the local newspaper.
- G. THE DEPARTMENT, prior to the public hearing, analyses the appeal application and prepares a written staff report for the Board of Zoning Appeals. The report is made available to the applicant and the public prior to the hearing date.
- H. THE BOARD OF ZONING APPEALS holds a public hearing which the applicant and those interested in the requested appeal should attend. Those attending may present testimony and evidence for and against the proposed variance.
- I. THE BOARD OF ZONING APPEALS reviews the request and makes a decision based on the staff report, neighborhood consideration, the results of the public hearing, and the Municipal Code requirements for granting an appeal

**THE DECISION OF THE BOARD OF ZONING APPEALS IS FINAL
UNLESS APPEALED TO THE CIRCUIT COURT WITHIN 30 DAYS OF
THE BOARD'S DECISION.**

CITY OF DANVILLE

APPEAL APPLICATION

MAKE CHECKS PAYABLE FOR \$206 TO THE CITY OF DANVILLE

IMPORTANT - PLEASE READ

Appeal application must be filed within thirty (30) days after the action being appealed.

No application for an appeal will be accepted for a Board of Zoning Appeals agenda unless the following conditions are met by the twentieth (20th) day of the month prior to a Board meeting which is held on the third Thursday of each month:

- a. All questions on this application have been fully answered.
- b. The application has been signed by the property owner or his/her agent, and property owner.
- c. A plot plan drawn to scale, showing the actual dimensions and shape of the lot, the exact size and location on the lot of all buildings and signs existing and proposed, and the location of all required parking spaces has been submitted (if applicable).

DATE FILED: _____
DATE: _____

BZA

APPLICATION NO. _____

RECEIVED BY:

LOCATION: 1501 W. MAIN STREET DANVILLE VA

TAX MAP
NUMBER: 061100400000100

ZONING

DISTRICT: HR - C, Highway Retail Commercial District

1. I (we) have applied for an appeal because of/on the following interpretation/determination:

THERE WERE GAMES OF SKILL MACHINES AT THE
CONVENIENCE STORE AND I/WE RECEIVED A NOTICE OF
ZONING VIOLATION THAT GAMING IS CONSIDERED COMMERCIAL
RECREATION AND A SPECIAL USE PERMIT WAS REQUIRED TO
OPERATE THE GAMES ON THE PROPERTY.

2. Date of interpretation/determination that is the subject of this appeal
(attach copy of referenced letter or other dated material).

SEE ATTACHED NOTICE OF ZONING VIOLATION DATED
MARCH 21, 2022.

3. The administrative official based this interpretation/determination on
the following ruling:

THE OFFICIAL STATED THAT THE VIOLATION INVOLVES
THE OPERATION OF INDOOR COMMERCIAL RECREATION
FACILITIES WITHOUT A REQUIRED SPECIAL USE PERMIT
IN A HIGHWAY RETAIL COMMERCIAL DISTRICT

4. I (we) feel that the administrative official was incorrect in their ruling based on the following:

VIDEO GAMES AND OTHER RECREATIONAL GAMES ARE
COMMON IN CONVENIENCE STORES SUCH AS THIS ONE AND THE
GAMES ARE A VERY SMALL PART OF THE BUSINESS. THEY ARE

THEREFORE ALLOWED BECAUSE THEY ARE A CUSTOMARY AND
INCIDENTAL ACCESSORY USE TO THE MAIN AND PRINCIPAL USE AS A
Any additional information, documents or pictures should be submitted with CONVENIENCE
the application to assist in the application process. STORE.

Please print and sign

MEM PARTNERS ; EDGEWOOD MART
BY SHAHID JAVID, PRINCIPAL & OWNER

(SEE APPLICANT'S
MEMORANDUM IN
SUPPORT OF APPEAL
ATTACHED)

Applicant

1501 W. MAIN STREET DANVILLE, VA. 24541
Address

434-797-1334
Phone

SHAHIDJAVID201@GMAIL.COM
Email

Shahid Javid

4-19-22

Signature and Date

Property Owner (if owner is not applicant)

Address

Phone

Email

Signature and Date



City of Dan
Community Development
Planning Division

3/21/2022

MKM PARTNERS
1501 W MAIN ST
DANVILLE VA 24541

RE: Zoning Violation at 1501 W MAIN ST.

Dear MKM PARTNERS:

The purpose of this letter is to inform you of a violation of the Zoning Code at 1501 W MAIN ST.

This violation involves the following:

Chapter 41 – Article 3.M.C.4, operating indoor commercial recreation facilities without a required Special Use Permit.

You must cease use of gambling and/or skill game machines. You may apply for a special use permit to allow for such use.

You have **THIRTY (30) DAYS** from the date of this letter to comply with the provisions of the Code. If you have any questions please contact me at (434) 799-5260.

Sincerely,

Shanika Williams

434-799-5260 Ext. 2503
williss@danvilleva.gov

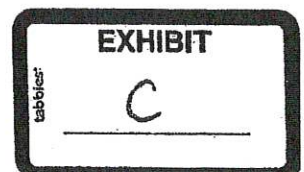
Applicant's Memorandum in Support of the Appeal

Preliminary Statement

The principal use of the property involved in this appeal to the Danville Board of Zoning Appeals (the "BZA"), is a convenience store. As a small part of its business, the store had on its premises one or two video machine games of skill. These games took up a very small part of the store and would represent a fraction of the store's business and revenues. These machines, just like video game machines such as Pac-Man and pinball machines before them, are found throughout convenience stores in Virginia as well as in other retail outlets. They are clearly incidental to the principal convenience store use.

Although these machines represent a tiny fraction of the convenience store business, the Danville zoning administrator issued a notice of zoning violation on July 19, 2019 in which he made a determination that such machines constitute commercial recreation and therefore require a special use permit. However, the Danville City Code expressly allows uses accessory to a permitted principal use if they are customary and incidental to the permitted principal use. Thus, the issue in this appeal is whether one or two video machines are customary and incidental to a convenience store. If they are, then the zoning administrator's interpretation is incorrect.

The zoning administrator erred because the machines are not a principal use, but represent a customary and incidental accessory use. The law is clear on the subject. For each zoning district, a zoning ordinance identifies permitted principal uses for a property. But the City Council also recognized that there can be a panacea of small, incidental uses that can accompany a principal use. A zoning ordinance cannot possibly identify every conceivable accessory use, so the Danville City Code includes a catch-all provision that accessory uses are also permitted. The test for an



accessory use is whether such a use is dependent upon the principal use and is not wholly unexpected in connection with the principal use. If it is not unexpected, then the accessory use is allowed under the applicable zoning. One or two video machines represents such a classic accessory use vis a vis a convenience store.

Argument

I. The Danville City Code Recognizes That Customary And Incidental Uses Are Allowed Accessory Uses.

The Danville City Code defines an accessory use as:

A use which is clearly incidental and subordinate to or customarily found in connection with and (except where otherwise provided in the Ordinance) is located on the same lot as the principal use on the premises. Those uses connected to the principal building by an open breezeway, will be considered accessory uses. Danville Code, Art. 15 b.

II. One Or Two Video Machines Are A Customary And Incidental Use For A Convenience Store.

An accessory use code provision is not unique to Danville. Indeed, such a provision is pervasive not only throughout Virginia, but the entire United States. (The applicant's counsel is not aware of any locality in Virginia that does not allow accessory uses to permitted principal uses.) Fortunately, that means ample case law exists outlining the test for a lawful accessory use.

In order to constitute a legal accessory use, a use does not have to be present a majority of the time or even a substantial percentage of time in connection with the principal use. Rather, for an activity to be an accessory use that is "customarily incidental," all that must be shown is that the use "is not rare or unique." *Jantausch v. Borough of Verona* 124 A.2d 14, 20 (N.J. Ch. Div. 1956), *aff'd* 131 A.2d 881 (N.J. 1957) ("The practice should be sufficient to justify the observation

that is not unique or rare.” The mode of activity must simply be sufficient enough that the activity constitutes “a recognized mode of activity.”); *Klein v. Township of Lower Macungie*, 395 A.2d 609 (Pa. 1978) (explaining that the adverb ‘customarily’ modifies the adjective “incidental”, not the noun “use.” Thus, if the use is not wholly unexpected then it is “customarily incidental.”). *State v. Smiley*, 182 Neb. 211 (1967) (finding that the rental of U-Haul trailers at gas stations is “neither unique nor rare, nor can it be called completely unusual or uncommon”); *City of Lake v. LaSalle Nat. Bank*, 395 N.E.2d 382 (Ill. 1979) (noting that a practice need not “be common to most or even to a large minority of [golf] courses” for it to be customarily incidental); *State v. P.T.&L. Const. Co.*, 389 P.2d 448 (N.J. 1978) (“The fact that a use is not customarily indulged in, however, is not conclusive, and even if the use in question is found in a small percentage of similar main uses, the use may still be found to be ‘customary’”); and *Laurel Lawn Cemetery v. Zoning Board of Adjustment of Upper Deerfield*, 545 A.2d 253, 254 (1988) (A crematory is an accessory use to a cemetery even though traditionally it has not been associated with a cemetery; crematories are beginning to occur more often in connection with cemeteries, so a crematory is therefore a lawful accessory use to a cemetery).

The best example demonstrating that the video machines in this case are an accessory use comes from the Supreme Court of Virginia. *Wiley v. Hanover County*, 209 Va. 153, 157 (1968). In *Wiley*, the property owner was operating a pigeon coop on a residentially zoned property. Suffice it to say, pigeon coops are not exactly common in neighborhoods. Hanover County claimed that the pigeon coop violated the applicable zoning. The Supreme Court of Virginia disagreed, and held that the pigeon coop constituted a lawful accessory use.

In this case, the zoning administrator has taken the position that a single video game in a convenience store requires a special use permit. In light of *Wiley*, and common experience, this

interpretation cannot be sustained. If a pigeon coop is a lawful accessory use, surely a video machine in a convenience store qualifies as an accessory use. You will find these types of machines in convenience stores and other retail outlets throughout Virginia.¹ Such machines are just the latest in a long line of stand-alone recreational machines, beginning with the pinball machine.

Moreover, many convenience stores have ATM machines, but you would not require the store to be zoned to permit a bank. The ATM machine is but a small accessory use that is not unexpected in a retail outlet. Similarly, it is not surprising to find one or two video machines in a retail outlet such as a convenience store.

The zoning administrator apparently relies in part on a special use permit that was required and adopted for a property that had recreational video games. See attached special use permit. But far from supporting the zoning determination, that special use permit proves the applicant's point. The special use permit allowed a host of recreational uses, including up to four pool tables and twenty video games. In that case, the principal use of the property was indoor commercial recreation.

In contrast, the principal convenience store use in this case does not involve commercial recreation. If one or two machines are present, a common occurrence in convenience stores since the invention of the pinball machine, then the use is manifestly an accessory one. The machines

¹ The sheer number of notices of zoning violations that the Danville zoning administrator has recently issued demonstrates the ubiquitous presence of such machines in Danville alone. The zoning administrator has recently issued notices of violation to multiple truck stops and convenience stores throughout Danville. In fact, the zoning administrator has indicated that more than 30 notices of violation have recently been sent to retail outlets.

in question are simply a logical evolution from pinball machines to video games such as Pac-Man and Galaga.

The applicant freely admits that if the machines in question constituted the principal use of the property, then a special use permit would be required. And if there were eight to ten machines on the property, perhaps an argument could be made the machines were a principal use. Whether a use is so extensive it crosses the line from an accessory to principal use is, of course, a matter of degree. But one or two machines does not a principal use make.

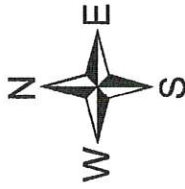
In short, one or two machines in the convenience store meets the classic definition of an accessory use: 1) the machine depends on the existence of the principal use (a convenience store), and you certainly cannot have a convenience store that consists entirely or mostly of one or two machines. The machines are there precisely because of the convenience store business; and 2) it is not rare or unexpected to see a stand alone video machine in a retail outlet such as a convenience store.

Think for a moment of the precedent that would be set under the zoning administrator's interpretation. Under the zoning administrator's logic, no accessory use is permitted, no matter how small, insignificant, or incidental to the principal use, if that use is not expressly delineated in the particular zoning district ordinance. If that were the case, then the City would be inundated with special use permit requests for a host of insignificant uses across a range of businesses. Further, the zoning administrator's interpretation would vitiate the Code provision that allows unspecified accessory uses. Danville City Code Article 15 b would be rendered meaningless.

Conclusion

The applicant respectfully submits that the BZA apply a common sense test embodied in the Danville City Code when deciding if something is a customary and incidental accessory use permitted under the Danville Code. By applying that common sense test, the conclusion becomes inescapable that one or two machines in a convenience store constitute a lawful accessory use.

Parcel Map



0 100 200 300 400 Feet

One Inch Equals One Hundred Feet (1" = 100')

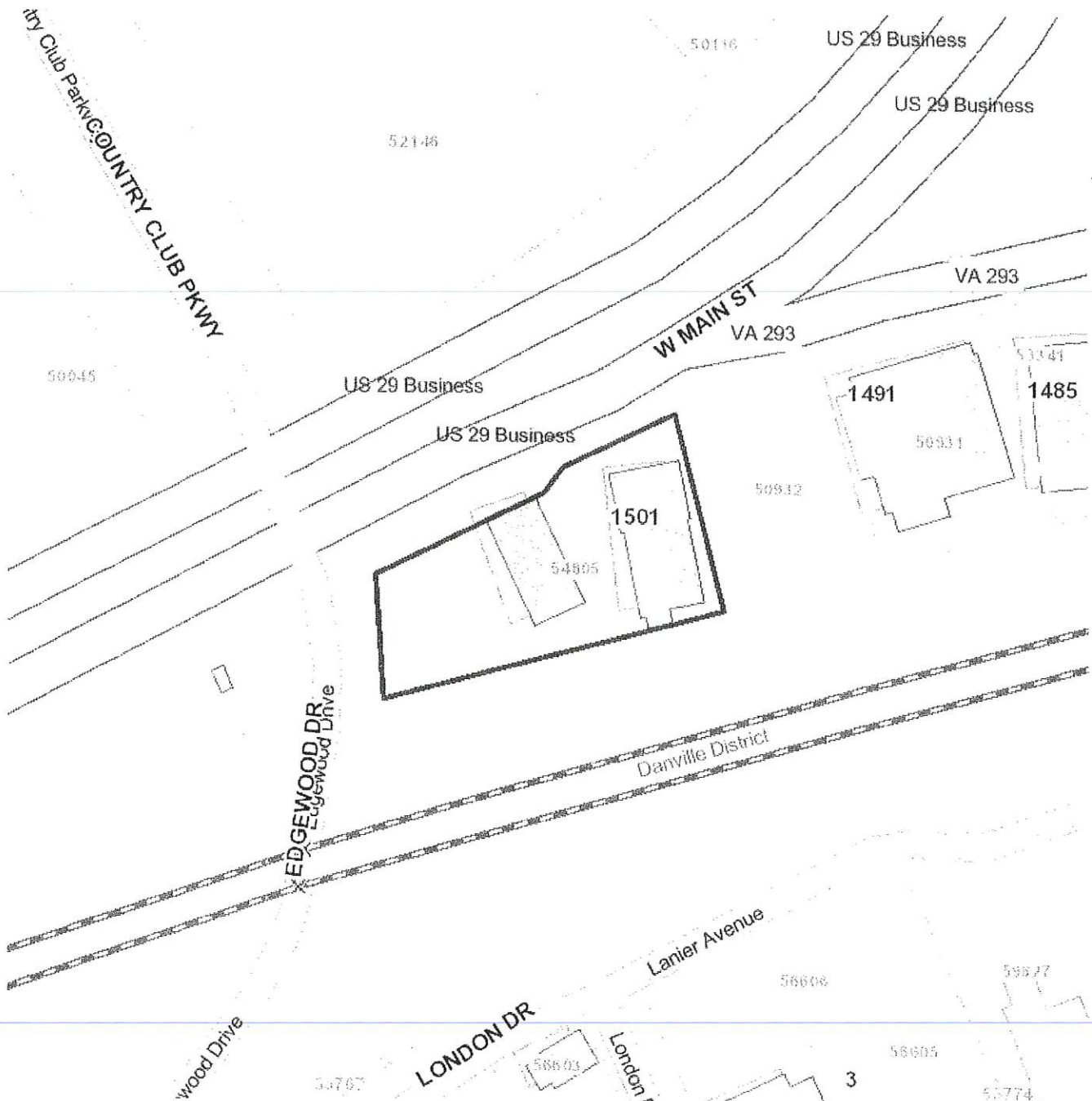
THIS MAP DEPICTS PROPERTY OWNERSHIP FOR TAX PURPOSES ONLY. IT IS NOT INTENDED FOR USE IN JUDICIAL PROCEEDINGS OR FOR MAKING LEGAL DISCUSSIONS OF PROPERTIES.

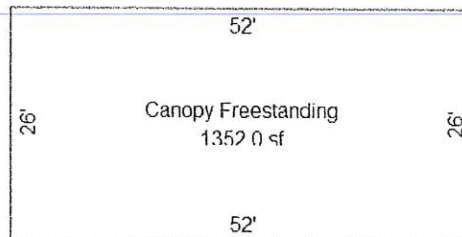
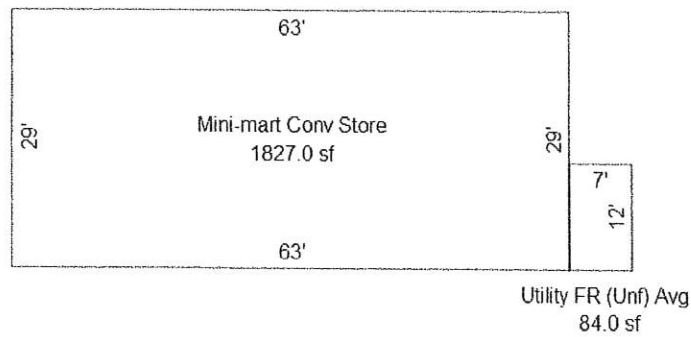
Prepared By
Real Estate Assessment
City of Danville
As Of December 12, 2021

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Sketch by Apex Medina™



City of Danville
427 Patton Street, Suite 208
Danville VA, 24541
Phone: (434) 799-5260

Board of Zoning Appeals

STAFF REPORT

MEETING DATE: MAY 19, 2022

RE: VARIANCE/APPEAL APPLICATION – PZ22-97 604 MEMORIAL DRIVE

Special Exception Request PZ22-97, requesting a Special Exception for a side yard setback as provided for in Zoning Ordinance Article 13.G.7.a. at 604 Memorial Dr. (Parcel #24515.)

BACKGROUND

The applicant wants to buy the restaurant and needs the special exception because the building was built into the side yard setback.

SPECIAL EXCEPTION

The Zoning Ordinance allows the BZA to grant a special exception for the yard regulation on a lot where on the adjacent lot there is a front, side, or rear yard that does not conform with such yard regulations in a way similar to the exception applied for, provided that the granting of such an exception will not cause the yard or use to encroach upon an existing or proposed right-of-way or dedicated public easement. In this case, the building east of the restaurant also does not conform to the 20' side yard setback requirement.

The BZA must find that the deck will not adversely affect the health, safety or welfare of persons residing or working on the premises or in the neighborhood, will not unreasonably impair an adequate supply of light and air to adjacent property, nor increase congestion in the streets, nor increase public danger from fire or otherwise unreasonably affect public safety, nor impair the character of the district or adjacent districts, nor be incompatible with the general plans and objectives of the City's Comprehensive Plan, nor be likely to reduce or impair the value of buildings or property in surrounding areas, but that such establishment or use will be in substantial accordance with the general purpose and objectives of this ordinance.

RECOMMENDATION

Staff recommends that if the BZA finds the circumstances meets the conditions in Zoning Ordinance Article 13.G.7.a., then the BZA can grant a special exception allowing the non-conforming building.

ATTACHMENTS

- ✓ Property Ownership & Existing Zoning Map
- ✓ Data Sheet
- ✓ Existing Land Use Map (Aerial 2019)



VARIANCE APPLICATION

No application for a variance will be accepted for a Board of Zoning Appeals agenda unless the following conditions are met by the twentieth (20th) of the month, unless a weekend, prior to a Board Meeting. The Board meeting is held on the third Thursday of each month.

1. A pre-conference meeting with the applicant and the Zoning Administrator or designated Staff person has been conducted.
2. All questions on this application have been fully answered
3. The property owner(s) or his agent with the written authorization of the owner has signed the application
4. A Plot plan drawn to scale, showing the actual dimensions and shape of the lot, the exact size and location on the lot of all building and signs existing and proposed, and the location of all required parking spaces has been submitted.
5. The Zoning Administrator has certified that the proposed use and construction plans comply will all provisions of the Zoning Code, except for which a variance has been requested.
6. Original signatures of the applicant(s) and/or property owner(s) are present on the application.
7. An application fee of \$206.00 has been submitted.

INFORMATION TO BE PROVIDED BY THE PLANNING DIVISION

CASE NUMBER: _____ EXISTING ZONING: _____

RECEIVED BY: _____

DATE FILED: _____ TAX MAP: _____

NUMBER: _____ BZA DATE: _____

VARIANCE FROM _____

ZONING SECTION _____

Property Address: 604 Memorial Drive, Danville VA. 24541

I (we) have applied for a variance to allow the following:

Special Exception of Side yard setback

§ 15.2-2309 [excerpt]

Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and (i) the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § 15.2-2286 at the time of the filing of the variance application.

I (we) now appeal to the Board of Zoning Appeals for a variance permitting the action described above in that:

- i. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance (Describe):
N/A
- ii. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area (Describe):
N/A
- iii. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance (Describe):
N/A
- iv. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property
Yes No N/A

- v. The relief or remedy sought by the variance application is not available through a special exception process

Yes No *N/A This is a Special Exception Request*

IN AUTHORIZING A VARIANCE THE BOARD OF ZONING APPEALS MAY IMPOSE SUCH CONDITIONS REGARDING THE LOCATION, CHARACTER AND OTHER FEATURES OF THE PROPOSED STRUCTURE OR USE AS IT MAY DEEM NECESSARY IN THE PUBLIC INTEREST AND MAY REQUIRE A GUARANTEE OR BOND TO INSURE THAT THE CONDITIONS IMPOSED ARE BEING, AND WILL CONTINUE TO BE COMPLIED WITH.

PRESENT OWNER (S) OF ALL PROPERTIES INCLUDED IN APPLICATION

(PLEASE TYPE OR PRINT):

1. NAME: Quick Service Realco, LLC

TELEPHONE: (913) 356-6300

MAILING ADDRESS: 10950 Grandview Drive, Suite 300, Overland Park, KS 66210

EMAIL ADDRESS: bhowk@kbpbrands.com

SIGNATURE: 

DATE: May 2, 2022

APPLICANT (PLEASE TYPE OR PRINT):

If the applicant is not the property owner, written authorization from the property owner must accompany this application.

NAME: Falcon Zone, LLC TELEPHONE: 724-880-1248

MAILING ADDRESS: P.O. Box 1028 Uniontown, PA. 15401

EMAIL ADDRESS: sahin.mahmut@yahoo.com

SIGNATURE: 

DATE: May 1, 2022

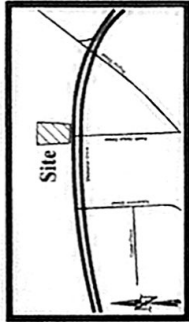
The decision of the Board of Zoning Appeals is final, unless appealed to the Danville Circuit Court within thirty (30) days of the date of the Board's decision in accordance with Article 13 Section I Item 2 of the Zoning Code, 1986 as amended.

By using map images and graphic encoding info, this subject property appears to be mostly in Zone Shaded "A" & "A2". Please refer to the above Insurance form map for Performance Rating. (Your Insurance form map number is 1114320342. Community Number 120044 0034. Effective 1/1/01 of September 29, 2003.

Information noted below is simply a refinement of fact regarding the location of observed encroachments relative to boundary, easement, and setback lines, and is not a legal opinion or determination of encroachments.

31 Parking Spaces
02 Handicapped Spaces
23 Total Parking Spaces

1465-8-04A (1/78)

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PHONE: (330) 777-0302
24 N. High Street, Suite 103, Akron, OH 44308

BOARD OF ZONING APPEALS MEETING

APRIL 21, 2022

Members Present

Ann Sasser Evans
Nicole Garrison
Gus Dyer
Gus Dolianitis
John Hiltzheimer

Members Absent

Lawrence Meder

Staff

Bonnie Case
Doug Plachcinski
Ryan Dodson

Chairman Dyer called the meeting to order at 10:00 a.m.

The meeting was turned over to Mr. Dodson for the election of officers.

I. ELECTION OF OFFICERS

Mr. Dodson called for nominations for Chairman.

Ms. Evans nominated Mr. Dyer as Chairman. The nomination was approved by a 4-0-1 vote. (Mr. Dyer Abstained).

Mr. Dodson called for nominations for Vice Chairman.

Ms. Evans nominated Ms. Garrison as Vice Chairman. The nomination of Ms. Garrison was approved by a 4-0-1 vote. (Ms. Garrison Abstained).

The meeting was turned back over to Chairman Dyer.

II. ITEMS FOR PUBLIC HEARING

- 1. Variance Request PLVAR2020-110 remanded from the Planning Commission on a case filed by Mark and Karen Davis, requesting a variance for a deck constructed without permits onto a legal non-conforming residential use at 734 Mt. Cross Road (Parcel #72873.) The Planning Commission declined to rezone the property.*

Mr. Dyer opened the Public Hearing.

Mr. Dyer closed the Public Hearing.

Mr. Dyer stated this is something that we reviewed over a year ago and my recollection is that this is a piece of property that was a legal non-conforming use because it was being used as residential and the property is zoned commercial?

Mr. Dodson stated that sounds correct.

Mr. Dyer stated the code does not allow you to expand a non-conforming use and this deck was considered an expansion on the non-conforming use. Is everyone caught up to speed? Questions or comments from the board? If this were in fact someone using this as an office which would be a legal conforming use then they could also construct a deck, correct?

Mr. Plachcinski stated they could.

Mr. Dyer stated what is the remedy if we denied this request.

Mr. Plachcinski stated the remedy is that the zoning ordinance allows the BZA to grant a special exception for uses in this scenario. The zoning ordinance lays out some criteria that are listed in the staff report in Article 13.G.4 where the BZA can grant a special exception allowing the deck to be an accessory to this non-conforming use. I advise this case meets those criteria and the BZA grants a special exception today.

Ms. Evans made a motion to keep the deck variance for Application PLVAR2020-110 as a non-conforming use. Mr. Dolianitis seconded the motion. The motion was approved by a 5-0 vote.

2. *Variance request PZ22-24, filed by the Danville Redevelopment and Housing Authority, requests to allow a 14' by 22' accessory building in the required front and side yard setbacks and within ten (10') feet of the principal building at 524 Chatham Avenue (Parcel # 23043). The accessory building is for storage to support the community center.*

Mr. Dyer opened the Public Hearing.

Present to speak on behalf of this request was Linwood Terry, from Danville Redevelopment and Housing Authority. Mr. Terry stated the purpose of us being here is that we are asking for a variance for the storage building. We have built a 1.6-million-dollar community center funded by the City of Danville, HUD Funds, and from the foundation. The purpose of this storage building is that we need a space to store tables and chairs for the community center because we do not have enough room in the building to store. Some of the pictures that I have submitted, you would have seen that in the back there is a basketball goal, and we cannot use it because we have nowhere to store the tables or chairs for our community area. In the pictures on the left side of the building there is not enough room to get back there with a storage building because of the distance between the building and the hill. In the back there is not enough room to place a building and there is no way to get to the back because we would have to come across individuals' properties with fence in one area and there is a wooded area that we could not get across because of the woods. The right side of the building we cannot get there because of the wooded area and transformers. The best place that we saw that we could get to the building was right there on the side which we thought would be the side of the building not being in the front of the building and that is why we chose to put it there. Somehow there was some missed communication with the contractor that bought the building, who was supposed to have gotten the building permit. We were under the assumption that the contractor was supposed to apply for the building permit. We went back and looked at the contract that he gave us, and nothing was in the contract saying that he was not responsible for getting the building permit.

We assumed that they were going to get it and they thought we were going to get the building permit. Normally, with the Housing Authority we tell them that they do not have to pay for the building permit, but they just must apply for the building permit and then they waive the fees when we are doing a project. Therefore, we are asking for a variance for the building, and it is a vital part that we need for the function of the community center to store stuff safely and securely out of the way.

Mr. Dolianitis stated is this not considered when the property was being built?

Mr. Terry stated no sir, after the building got going more activities were brought up that wanted to be done in the building. We had a storage room set up in the community room, but it was not big enough to hold everything.

Ms. Evans stated was this the building that was prebuilt and just placed on the site or was it stick built?

Mr. Terry stated it was prebuilt.

Ms. Evans stated they did not realize that this could not be put in the front yard setback?

Mr. Terry stated evidently not.

Mr. Dyer stated the issue is not necessarily who was supposed to get the building permit because the building permit would have been denied.

Ms. Evans stated if it said for the front yard.

Mr. Dyer stated right.

Mr. Terry stated we do have support from the resident that lives right next to the building.

Ms. Garrison stated from what you said you knew that you should have a building permit from somewhere before you put this building there, right?

Mr. Terry stated yes ma'am.

Ms. Garrison stated you knew that you needed a permit, and you did not make certain that you had one before you had the building brought?

Mr. Terry stated we mentioned to the contractor had they gotten the building permit that they would not have to pay for it.

Ms. Garrison stated you did not make sure you had a building permit?

Mr. Terry stated no ma'am.

Mr. Dyer closed the Public Hearing.

Ms. Evans stated I think it is a distraction being in the front.

Ms. Garrison stated I agree.

Mr. Dyer stated I agree with that.

Ms. Garrison stated it is not attractive.

Mr. Dyer stated another problem I have is that we will be setting a precedent.

Ms. Garrison stated I am also troubled by the fact that they are asking forgiveness instead of permission.

Mr. Dolianitis stated it looks like that should have been foreseen of what they were going to need as far as space.

Ms. Evans stated how long has this been in existence?

Mr. Dyer stated the building is fairly new.

Ms. Evans stated does it meet the side yard setbacks from the wall?

Mr. Plachcinski stated it would be 5 feet, so it is close for an accessory building. We typically never allow an accessory building in the front yard.

Ms. Evans stated I am just trying to look at all angles.

Ms. Garrison made a motion to deny the Variance Application PZ22-24. Mr. Dolianitis seconded the motion. The motion was denied by a 5-0 vote.

3. *Appeal of Zoning Administrator Request PL22-69, filed by SND Management LLC c/o Shelby Fitzgerald, requests an appeal of a zoning violation as allowed in Article 13 of Chapter 41 of the Code of the City of Danville, Virginia at 3007 Riverside Drive (Parcel # 56216). The Zoning Administrator sent a zoning violation notice to the property owner for operating skill games.*

Mr. Dyer opened the Public Hearing.

Present to speak on behalf of this request was Terrell Carter, I am employed with SND. Mr. Carter stated I am here to speak about the request the appeal the zoning for the Special Use for the violation. I do not believe that they received a violation notice that they were in violation of anything.

Mr. Plachcinski stated I will verify that.

Mr. Dyer stated is this a rehash of what we discussed over a year ago, the skilled games?

Mr. Plachcinski stated were you attempting to apply for a Special Use Permit?

Mr. Carter stated yes.

Mr. Plachcinski stated, and we would not allow you to apply for the Special Use Permit because we cannot grant a Special Use permit.

Mr. Carter stated I understand, yes sir.

Mr. Plachcinski stated you are appealing?

Mr. Carter stated the discussion of not allowing me to apply for the Special Use Permit.

Mr. Plachcinski stated that makes sense.

Mr. Dyer stated okay does everyone understand what the situation is.

Mr. Carter stated just to clarify for my understanding right now with the zoning laws and statutes that right now within the City of Danville you cannot apply for a Special Use Permit because it just does not allow it. I was just told that you just cannot do it.

Mr. Plachcinski stated right it still is a decision and let me explain the reason to the group. In Virginia Code skill games remain illegal. Article 1 of the zoning ordinance *"Whenever any provision of any State or Federal statute or other City ordinance or regulation imposes a greater requirement or a higher standard than is required by this ordinance, the provision of such State or Federal statute or other City ordinance or regulation shall govern."* We did not allow the application for a Special Use Permit because the State Law overrides our local zoning codes. So, even if we were to have something in our code to allow for skill games, until the States Laws are amended to allow them the city cannot consider.

Mr. Dyer stated so was their application an application for skill games or was it for an arcade?

Mr. Plachcinski stated it would have been for indoor recreation.

Mr. Dyer stated so someone can come before you and request a special use permit for indoor recreation, correct?

Mr. Plachcinski stated they can.

Mr. Dyer stated if these folks were putting in pin balls instead of skilled games, then they could come to you to make an application?

Mr. Plachcinski stated they could.

Mr. Dyer stated what is the difference? If they come to you, are they asking specifically for a Special Use Permit to operate skilled games or requesting a Special Use Permit for?

Mr. Plachcinski stated that was our understanding that they were requesting an indoor recreation use that involves skilled games.

Mr. Dyer stated let us say they come back to you tomorrow and said we just want to make an application for indoor recreation. Do you ask them what indoor recreation is?

Mr. Plachcinski stated we would yes, under the zoning code there is an explanation of what the proposal is.

Mr. Dyer stated if they were to come to you tomorrow and say that they want to put in 3 pool tables would they still have to have a Special Use Permit for indoor recreation, correct?

Mr. Plachcinski stated that is correct.

Mr. Dyer stated the denial of their request is to allow them to make a Special Use Permit application which would go before the Planning Commission and City Council.

Mr. Plachcinski stated that is correct.

Mr. Dyer stated what they are appealing for is your decision that they could not apply for a Special Use Permit for skilled games.

Mr. Plachcinski stated that is correct.

Mr. Terry stated speaking of skilled games and the legality of the issue right now in Virginia there is an injunction in place.

Mr. Plachcinski stated we cannot consider that injunction. The zoning ordinance is very specific, it says the statutes. The injunction that is in place only applies to previously authorized machines in locations under the Virginia ABC, which this location is not.

Mr. Dyer stated in other words even if they are permitted it is going to be those that were grandfathered prior to July 1, 2020. Is that correct?

Mr. Plachcinski stated correct.

Mr. Dodson stated that was my understanding. That injunction specifically applies to the Governor, the Attorney General, the Commonwealth of Virginia, including the Commonwealth's Attorneys, and the ABC Board, but no other entity such as the city through zoning. The injunction is very specific to criminal enforcement.

Ms. Evans stated just to clarify you do not have skilled games now?

Mr. Terry stated at this moment there are skilled games.

Ms. Evans stated in your building there are skilled games?

Mr. Terry stated yes.

Ms. Garrison stated, and you are not registered through the ABC Board?

Mr. Terry stated we cannot register with the ABC Board.

Ms. Garrison stated you did not register before?

Mr. Terry stated the business was nonexistent prior to. We just want to make sure that we are operating within the statute that you have set forth. We came here to bring to your attention that we are not trying to do anything underhanded.

Mr. Dyer stated under these circumstances they are not required to meet the five criteria. They are just appealing your decision and we just decide whether to uphold your decision or to overturn your decision. Is that correct?

Mr. Plachcinski stated that is correct.

Mr. Terry stated I would like to add that we are trying to do it the right way.

Mr. Dyer stated we appreciate that, but the problem is that we do not make the laws. We just must determine whether you are following them or not. We must determine if that Mr. Plachcinski is following the correct protocol.

Mr. Plachcinski stated there were approximately 70 machines that were allowed by Virginia in the City of Danville, when Virginia for 1 year allowed legal skilled games. We know at least during that time there were about 130 operating. So, already when the State Legislature did allow some even at those locations they seemed to multiply, and right now we are aware of about 300 machines operating at locations that were previously approved. That number has at least quadrupled and that does not include any locations that were not approved by ABC.

Mr. Carter stated it was my understanding that the previous Governor's order gave ABC a mandate where they could govern skilled games. I believe that mandate ended on July 2021 and at that point and time ABC is not in control of it. Then once this Judge declare the injunction and it became common in a gray area within the law and ABC does not control it either if we are speaking at this moment right now. No one govern it.

Mr. Harold Garrison, the Chairman of Planning Commission, stated I will state that if they come before the Planning Commission asking for an indoor recreation that we will ask specifically what they are planning to put in and if they say that they are putting in skilled games that is one of the conditions that we will put on there that there will not be skilled games allowed.

Mr. Dyer closed the Public Hearing.

Mr. Garrison stated I would like the Attorney to just clarify the whole ABC Board situation.

Mr. Dodson stated originally there was no controlling law on the books for these machines a couple of years ago. A law was passed I believe in 2020 that banned them 1 year from the date that the law passed and for 1 year machines that were in ABC licensed facilities prior to that first date were allowed to continue to operate for 1 year. There is a fixed number and usually there is an orange sticker on the machines where those machines are grandfathered in. On July 1, 2021, is when that expired, and it technically went from the grandfathered ones being allowed to none being allowed. The criminal enforcement of the ban has been challenged in Greenville County and there is an injunction pending the outcome of that case against criminal enforcement of the ban, specifically on these grandfathered machines. So, right now whether these machines are illegal is being contested right now and that is what the injunction is about. It is about criminal enforcement but zoning and other issues like that were not subjected to it nor was the city individually subjected to it. Only the Governor, Attorney General, the Commonwealth including the Commonwealth's Attorney's, and the ABC Board.

Mr. Dyer stated if in fact the Judge determines these machines are on the same par with pool tables and pinball machines then all they would be required to do is to come back and request a Special Use Permit for indoor recreation.

Mr. Dodson stated presumably if that is how the Judge rules that all the machines are allowed. I am not sure if the specific enforcement is against the preexisting ones that were allowed to operate.

Mr. Dyer stated so it would be determined by what the Judge says.

Mr. Dodson stated that is correct.

Mr. Dyer stated if these folks were to come back tomorrow and request a Special Use Permit for indoor recreation saying they were going to put in 50 pinball machines. Since pinball machines are not questionable, then Mr. Plachcinski would have no grounds to deny them the right to request this Special Use Permit?

Mr. Dodson stated that is my understanding and I believe the sole denial here is because of these specific machines.

Mr. Dyer stated the Planning Commission can recommend denial and the City Council can in fact deny the Special Use Permits.

Mr. Dodson stated yes.

Mr. Plachcinski stated Mr. Plachcinski cannot tell someone that they cannot apply.

Mr. Dodson stated he cannot tell someone that they cannot apply as long as they are not requesting any illegal act.

Mr. Dyer stated that is why this request was denied because this is being an illegal act not because he does not think they have the right to request a Special Use Permit.

Mr. Dodson stated yes sir.

Ms. Garrison stated he has denied them the opportunity to apply for a Special Use Permit. If in May the Judge comes along and says forget it, it is legal to get on to it. Then they can come back.

Mr. Dyer stated this does not have any impact on their ability to come back next week, in fact if the law changes. Correct? This is not a thing where if they are denied they must wait a year or something like that.

Ms. Garrison stated if the law changes in May.

Mr. Dyer stated maybe, that is not the right question.

Mr. Dodson stated my understanding is denial from Planning Commission and City Council is when they are not allowed to have a substantially similar application for a year.

They have not made an application yet and your decision on this will not be binding right now.

Mr. Dyer stated this determines whether they can make their application or not.

Mr. Dodson stated right now.

Mr. Dyer stated a month from now that may change.

Mr. Dodson stated yes, and they will not be prohibited at that stage.

Mr. Dyer stated we are not grandfathering anything that would not give them the ability to make this application.

Mr. Plachcinski stated no, they will retain all opportunities for due process.

Mr. Dyer stated did you get all of that?

Mr. Carter stated yes sir.

Mr. Plachcinski stated I would like to clarify and point out the 3 cases and I apologize for this 504 Kemper and Riverside did not receive notices of violation and they applied proactively, and South Main Street did receive a notice of violation. I am not sure if they are all the same folks, but the community began to understand that we were sending notices of violations because they were reported, and they did apply. We would not allow them to apply for Special Use Permit at 504 or Riverside Drive. The South Main case that we have received a notice of violation, but this location did not.

Mr. Dyer stated these folks have never been in violation, and they have not done anything?

Mr. Plachcinski stated we have not sent them a notice of violation.

Mr. Dyer stated all they have done is make a request for a Special Use Permit and you told them that they could not request that use.

Mr. Plachcinski stated right.

Mr. Dyer stated that is what we are upholding whether he had the authority or was correct in doing that or we are going to overturn it.

Mr. Dodson stated it would be either to overturn or uphold the zoning administrator's decision to deny this Special Use Application.

Ms. Evans made a recommendation to uphold the zoning administrator's decision to deny this Special Use Application for PL22-69. Mr. Dolianitis seconded the motion. The motion was approved by a 5-0 vote.

Mr. Dyer stated Mr. Plachcinski's determination that you cannot apply for a Special Use Permit as of right now we are upholding and that may change in the future.

- 4. Appeal of Zoning Administrator Request PL22-71, filed by Usman Enterprise c/o Ganzafari Ali, requests an appeal of a zoning violation as allowed in Article 13 of Chapter 41 of the Code of the City of Danville, Virginia at 900 South Main Street (Parcel # 22494). The Zoning Administrator sent a zoning violation notice to the property owner for operating skill games.*

Mr. Plachcinski stated this one did receive a notice of violation.

Mr. Dyer opened the Public Hearing.

Present to speak on behalf of this request was Terrell Carter. Mr. Carter stated this is Mr. Ali and this location did receive a violation notice but the case that we just previously discussed is a variance to this case. This location was approved by The ABC Board, and we had the yellow stickers. I was told that the yellow stickers had to be removed and destroyed once the mandate ended and there are no longer stickers on the machines. We are trying to apply for the Special Use Permit, and this is the same kind of issue before us again.

Mr. Dyer stated once again he is applying for a Special Use Permit for indoor recreation and that is being denied or why?

Mr. Plachcinski stated he is appealing to the notice violation.

Mr. Dyer stated you determined he was in violation because he does not have a Special Use Permit for indoor recreation.

Mr. Plachcinski stated correct.

Mr. Dyer stated has he come to you to apply for a Special Use Permit?

Mr. Plachcinski stated no because we have no way of verifying or understanding any previous compliance. So, we would not allow him to apply for a Special Use Permit.

Mr. Dyer stated when he was operating legally with the ABC permit, he was operating legally through state channels but not locally because he did not have a Special Use Permit for indoor recreation.

Mr. Plachcinski stated correct.

Ms. Evans stated if he had that then he could continue until the injunction decision is made on May 18.

Mr. Plachcinski stated he would still be in violation of the Special Use Permit which has never been allowed.

Ms. Evans stated okay.

Mr. Carter stated what Mr. Plachcinski is saying that even when we were under the ABC that the Special Use Permit was not even allowed then?

Mr. Plachcinski stated it was never applied for and there was never an application. I would also ask for discussion about how many machines were approved by ABC at this location and how many are in operation now.

Mr. Carter stated 6 machines were approved and 6 machines are in operation.

Mr. Dyer stated we had some debate about what constitutes indoor recreation and determined anything over 3 machines constitutes indoor recreation, and you are required to have a Special Use Permit for that. Once again, a Special Use Permit is a purview of the Planning Commission and City Council. If Mr. Ali were to come to you and make an application for commercial indoor recreation, would you again tell him that he cannot make that application, or would you let him make the application and let the City Council make that decision to obtain it? This is complicated and I apologize for all these questions.

Mr. Plachcinski stated because a notice of violation was sent prior to the recent city ordinance changes and there was not an appeal filed I believe we would have to verify but we may be able to allow a Special Use Application.

Mr. Dyer stated has that been passed yet that these would be considered that adult entertainment would be restricted.

Mr. Dodson stated it has passed and usually under the doctrine of vested rights in Virginia applications or similar documents that were filed prior to a zoning code change, the previous zoning laws still technically apply to that.

Mr. Dyer stated my question is will he be grandfathered in, or will he get another violation letter saying that he is not zoned correctly.

Mr. Dodson stated sounds like it is a zoning administrator call and it sounds like a zoning administrator would consider that being prior to the change which means the vested rights would attach.

Mr. Plachcinski stated the application we would expect some verification of compliance with what had been allowed under previous Virginia Law through ABC. We would like to see evidence of the licenses, paperwork documentation of yellow stickers, and explanation of that alone is what is being requested.

Ms. Evans stated do you have that?

Mr. Ali stated I can generate that.

Mr. Dyer stated to clarify things this case is different because what Mr. Ali has received is a notice of violation through the City Planning Department that he is in violation of the code as opposed to the other folks they were not in violation of anything. What Mr. Ali

needs to do is clean up his violation of the code and he can do that by coming to you and applying for a Special Use Permit for indoor recreation.

Mr. Plachcinski stated correct.

Mr. Dyer stated he would not be able to operate his machines until that Special Use Permit is granted?

Mr. Plachcinski stated I will have to examine that question more carefully.

Mr. Dyer stated okay, the question before us right now is whether Mr. Ali is in violation of the city code that requires him to have a Special Use Permit for indoor recreation. If we uphold that and find that he is in violation, then all he needs to do is go and apply for a Special Use Permit for commercial indoor recreation. He will need to go through the channels of the Planning Commission and through the City Council. Does everyone understand?

Mr. Ali stated the whole area operates these machines. How come they can operate the machines?

Mr. Dyer stated they are all going through the process. I hate to say this, but somebody must be first or second.

Mr. Plachcinski stated if I could also respond that many locations are under criminal investigation right now, which we cannot comment on because there may be ongoing criminal investigations. There was a concern mentioned in Virginia, when there is a complaint about zoning or other uses it is anonymous, so I do not know who made the complaint. We sent more than 10 letters out to other violators, and if we are aware of anyone we pass that information along to other legal authorities.

Mr. Ali stated in the meantime we will apply for the permit, but we can't still operate those machines?

Mr. Plachcinski stated I will go over that with the City Council and we will come up with a determination but if the BZA would suggest that the applicant apply for a Special Use Permit. Then I would just ask that they give a reasonable time frame, like by the end of the week to apply for a Special Use Permit so that we can get them on the May Planning Commission meeting.

Mr. Dyer stated even if it were determined that you could not operate and then it was determined that you can legally operate your machines it would be no more than six weeks. I think that would be a reasonable time.

Mr. Plachcinski stated we would expedite your case to get it in to that process.

Mr. Dodson stated presently Doug if they were to go through these channels, just to clarify you would not be seeking any actual penalties under the violation as long as they are making efforts.

Mr. Plachcinski stated as long as the ball is still bouncing. Does that make sense?

Mr. Carter stated yes, I have one more question. Did I hear you correctly when you said if it is 3 or less a Special Use Permit is not required.

Mr. Dyer stated that is something that we have discussed and was overruled by the Board, and they determine that any amount of these games does require a Special Use Permit. There is a section in the code and one of them defines what an amusement parlor is and that is any business that has more than 3 machines. Then there is a part of the code that requires a Special Use Permit to have an amusement parlor. There was some opinion that if you had 3 or fewer machines you did not have to apply for the Special Use Permit because you were not an amusement parlor. The board overturned that and decided that any number of these machines constitutes commercial indoor recreation and even 1 machine requires a Special Use Permit. If you want to see a lawyer knock yourself out but that is just the background. If you want to go back and read some of our minutes, they are online, and I cannot begin to tell you where they started but you can go back and see what the discussions were at that point.

Mr. Dodson stated I believe it was December of 2019. It was right before Covid.

Mr. Dyer closed the Public Hearing.

Ms. Evans made a motion that the BZA to affirm the notice of violation for PL22-71 and the applicant has until Friday, April 22, 2022, for a Special Use Permit. Mr. Hiltzheimer seconded the motion. The motion was approved by a 5-0 vote.

- 5. Appeal of Zoning Administrator Request PL22-72, filed by Usman Enterprise c/o Ganzafari Ali, requests a Special Use Permit as allowed in Article 13 of Chapter 41 of the Code of the City of Danville, Virginia at 504 Kemper Road (Parcel # 23940). The applicant attempted to apply for a Special Use Permit, and we told them no.*

Mr. Dyer stated this is the exact same case that we had in item 3.

Mr. Plachcinski stated that is my understanding.

Mr. Dyer stated basically the same.

Mr. Carter stated yes, it is the same.

Mr. Dyer stated they are not in violation or anything and all we are doing again on this one is upholding the zoning administrator decision or overturn his decision.

Ms. Garrison made a recommendation to uphold the zoning administrator's decision to deny this Special Use Application for PL22-71. Ms. Evans seconded the motion. The motion was approved by a 5-0 vote.

- 6. Variance request PZ22-74, Filed by the City of Danville, to allow an 8'x8' wood deck with stairs in the front yard setback of a legal non-conforming building at*

145 Gypsum Road (Parcel #76482). The deck and stairs provide better access to Fire Department storage space.

Mr. Dyer opened the Public Hearing.

Present to speak on behalf of this request was John Yeaman, the Division Chief of Training and Safety for the Fire Department. Mr. Yeaman stated what we are looking to do, this is a training building that we have had for the fire department thirty plus years or longer before me or Cpt. Dave Cornell, he is with the fire department as well. We are trying to make better use of it. We use this building for what we call "mayday" fire fighter and rescue. We teach a lot of fire service people on how we rescue other people. In this building we focus on how to rescue each other. This will allow us to make better use of the second story of the building, it will allow us to go up and down a set of steps and have a small deck area outside verses trying to gain access by a ladder. It will give us a safer means of access and egress to the second floor of the building.

Mr. Dyer stated how is your current access to that second floor?

Mr. Yeaman stated a ladder.

Mr. Dyer stated there are no steps or anything?

Mr. Yeaman stated no steps on the inside, and it has been like that since the day that it was built.

Mr. Cornell stated the roof was added a year or two ago. It had a concrete flat roof, and it was leaking, and we were able to obtain some trusses. We created this room creatively.

Ms. Garrison stated it was built specifically for the fire department or did you just acquire it from somewhere else?

Mr. Yeaman stated it was built for the fire department. If you are aware of the training facility that we have on Stinson Drive the fire training building out there. Before that building was built this is the one that we used. This building has been in place, and we use to do live fire training inside this building, and we would burn straw, pallets, and stuff like that. Then when we built our new building, we stopped using this building for those purposes. It has always been used for fire fighter training.

Mr. Dyer stated will you go back Doug and stop at the plat. Where does this building sit?

Mr. Yeaman stated if you are familiar when you turn left off Gypsum Road and you go down and cross the railroad tracks. Before you go through the gate to the wastewater treatment plant the gravel road kind of bares to the right and the building sits to the right just outside of the fence of the wastewater treatment.

Mr. Dyer stated this property is zoned industrial.

Mr. Plachcinski stated yes.

Mr. Dyer stated what are the setbacks for industrial zoning? It does not look like they are within.

Mr. Plachcinski stated the issue is with the railroad.

Mr. Dyer stated the yard here that you are intruding on is a railroad track.

Mr. Yeaman stated it is about 75 feet from the railroad tracks.

Mr. Dyer stated and that violates.

Mr. Plachcinski stated where the property line is. There is not a physical development, so the right of way or the railroad.

Mr. Dyer stated was the railroad notified of this application since they are the property owner.

Mr. Plachcinski stated I believe they were.

Mr. Dyer stated have you received any feedback from them and are they opposed?

Mr. Plachcinski stated no. Rather than it being a variance application we recommend it be just like we did the first application today with a special exception just allowing it a nonconforming building the additional accessory to it.

Mr. Dyer closed the Public Hearing.

Ms. Evans made a recommendation to allow this accessory as a non-conforming use. Ms. Garrison seconded the motion. The motion was approved by a 5-0 vote.

III. APPROVAL OF MINUTES FROM OCTOBER 21, 2021

The October 21, 2021, minutes were approved by a unanimous vote.

IV. OTHER BUSINESS

Mr. Plachcinski stated we will have business in May.

Ms. Garrison stated is it skilled games?

Mr. Plachcinski stated it is.

Ms. Garrison stated is there any advantage or any way to delay these skilled games until after that Judge rules because it seems to me that everything is pending on his decision?

Mr. Plachcinski stated we want to make sure that we allow people the appeal process to keep going and by delaying it will leave things up in the air for them and the city. I am optimistic that the Judge's ruling will clarify this issue. However, that **is something far**

from what we can count on. I would not expect in May as the trial proceeds that there will be any immediate creolization.

Ms. Garrison stated there's not going to be a magic pill.

Mr. Plachcinski stated the other thing we will be proposing are some basic sets of bylaws, rules, and procedures we are doing with all the boards, and you will have them in your packet ahead of time. They are pretty cut and dry. There is nothing change, basic guidelines for running the public hearing and that sort of thing.

Ms. Evans stated I would like to discuss what we can do about members that have not attended in years.

Mr. Plachcinski stated I can have Clerk DeMassie pull the attendance records and we can look at that.

Mr. Dyer stated technically it says if you miss more than two meetings in a row you are supposed to be excused.

Ms. Garrison stated I have been here over six years and there is a member that I have never met.

Ms. Evans stated it is time for that position to be filled.

Mr. Dyer stated it is unfair to the applicant because in fact we do require 4 votes to approve anything and a lot of times there are only 4 people here. It is not fair to the applicants. If anybody knows anyone that would like to apply, then I would encourage them to apply. The problem is that we do not have anyone that wants the position.

With no further business, the meeting was adjourned at 10:59 a.m.

APPROVED